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Regulatory
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Final Regulation Agency Background Document

Agency name	Department of Taxation ("TAX")
Virginia Administrative Code (VAC) citation	23 VAC 10-210-1020
Regulation title	Chapter 210 – Retail Sales and Use Tax
Action title	Amends 23 VAC 10-210-1020, 'Motor Vehicles Refinishers, Painters, and Car Washers', to reflect a statutory change.
Date this document prepared	September 17, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The 2005 General Assembly enacted House Bill 2762 (2005 Acts of Assembly, Chapter 121) amending the definition of "retail sale" and "sale at retail" set forth in § 58.1-602 of the Code of Virginia to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from Tax's longstanding policy that treats automotive refinishers and painters as service providers and the taxable user or consumer of tangible personal property used in providing their service. This legislative change allows automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charge for materials.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Tax Commissioner approved this regulatory action on October 14, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Code of Virginia § 58.1-203 provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

As a result of legislation passed by the 2005 General Assembly, the law with respect to the application of the sales and use tax to automotive refinishers and repairers was altered. A legislative change in the definition of "retail sale" and "sale at retail" provided automotive refinishers and repairers the option of continuing to operate as service providers, or to treat themselves as retailers with respect to tangible personal property that becomes permanently attached to motor vehicles during the repair process. The purpose of this action is to amend it to reflect this legislative change and to provide guidance to the automotive refinishing industry as to their options with respect to applying the sales and use tax.

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety and welfare of its citizens.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The 2005 General Assembly amended the definition of "retail sale" and "sale at retail" to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from longstanding policy that treats automotive refinishers and painters as service providers and the taxable user and consumer of tangible personal property used in providing their service.

Prior to the law change, automotive refinishers and painters are treated as service providers and are the taxable user and consumer of all tangible personal property, i.e. primer, paint, sealant, etc., consumed by them in restoring motor vehicles. The wording of this legislative change allows automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charge for materials. This regulation section is being amended to reflect this legislative change, provide guidance to the industry, and to also alleviate any confusion that may result from the differing tax application within the same industry.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages to this regulatory action are to provide guidance to the automotive refinishing industry and the general public as to the tax application to the automotive refinishing and repair industry as a result of the 2005 legislative change to the definition of "retail sale" and "sale at retail". This guidance will ensure compliance with TAX's policies with regard to automotive refinishers and painters and ensure that these policies are universally applied to TAX's audit staff.

The regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes were made since the publication of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

TAX received no comments during the public comment period following the publication of the proposed regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10-210-1020	N/A	Currently, this regulation section states that automotive painters, repairers and refinishers are service providers and are the taxable users and consumers of all tangible personal property used by them in painting, repairing and refinishing of automobiles, when such tangible personal property becomes permanently attached to the vehicle.	The 2005 General Assembly passed legislation that amended the definition of "retail sale" and "sale at retail" to include separately stated charges for materials used by automotive refinishers and repairers, thus allowing automotive repairers and refinishers to purchase these items exempt for resale and charge the tax to the customer on the separately stated charges. This option of accounting for the sales is totally at the discretion of the repairer and refinisher. This regulatory action amends the regulation section to conform to this statutory change. (House Bill 2762, Chapter 121, 2005 General Assembly).
10-210-1020	N/A	Current regulation section does not address consumables used by motor vehicle refinishers and painters that elect to treat themselves as retailers.	The regulation section has been amended to add a section to further clarify that consumables are taxable to motor vehicle refinishers and painters, regardless of their election of tax treatment.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Department has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.